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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. 456

THE GRAND LODGE OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, ET AL., *Petitioners*

v.

JOHN J. KING, EARL N. ANDERSON, ET AL., *Respondents*

PETITIONERS' REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Petitioners submit this reply to the brief of the respondents in opposition to the petition for a writ of certiorari in the above-entitled cause because of their belief that it will be helpful to the Court in its consideration of the petition. Respondents' brief in opposition, instead of sharpening the issues presented to the Court, simply sows confusion and seeks to obscure the basic problem of statutory interpretation that is

involved. Petitioners therefore make the following points by way of reply which they believe appropriate:

1. Respondents continue to reiterate that it is the contention of the petitioners that a union member who happens to be an officer or employee of the union does not enjoy the protection of the LMRDA Bill of Rights. (Resp. Br. 17-18.) Petitioners do not make such contention and have never made such a contention. It is obvious that a union member enjoys the protection of the LMRDA Bill of Rights whether he is simply a member or whether he is a member-officer or whether he is a member-employee. The question presented is the scope of that protection under the statute. Is the protection of the statute limited to actions of the union depriving an individual of membership or otherwise limiting his exercise of membership (as the petitioners contend) or does the statute also restrict union action directed only to a union-employee relationship (as the respondents contend)? It is to this basic problem of statutory construction and the consequences which flow therefrom that the petition is directed.

The respondents' statements that they do not assert that the LMRDA governs the "employment relation" (Resp. Br. 8) are simply a resort to semantics. The only action taken by the union against the respondents was to terminate their employment relationship with the union. They have remained members with full membership rights including the right to run for local or international office and to support or oppose candidates of their choice in any union election. The basic relief requested by the complaint is for a mandatory injunction restoring the respondents to their jobs with the union and the assessment of damages for their

alleged unlawful discharge from such jobs. (Resp. Br. 32, 33.)

2. Respondents now argue that the problem of statutory construction involved does not raise any question of substantial importance warranting review by this Court. (Resp. Br. 11-14.) However, when the petitioners applied to the United States Court of Appeals for the Ninth Circuit for permission to take an appeal from the order of the District Court pursuant to Title 28, Section 1292(b), United States Code Annotated (R. 152), the respondents supported that application. After stating their belief in the correctness of the District Court decision, respondents made the following statement to the Court of Appeals: (R. 180)

> "However plaintiffs do urge that this Court grant the defendants' application for permission to file an interlocutory appeal, as plaintiffs agree with the District Court that 'the case appears to be one of first impression.' (p. 5), and for this reason, it is in the plaintiffs' best interest that an authoritative appellate affirmation of their rights to relief under the provisions of the Labor-Management Reporting and Disclosure Act be obtained prior to trial of this Action."

The problem of statutory construction involved is no less important today and it is still in the best interest of the respondents as well as all unions and all union members that an authoritative judicial determination of the scope of the statute be rendered. Such an authoritative determination can come only from this Court particularly in the light of the decisions of Federal courts cited at pages 17-20 of the petition holding that the statute deals only with a union-member relationship and does not involve the union-employee relationship.

The opinion of the Court of Appeals recognizes the substantial nature of the problem presented in its observation that "Undoubtedly a substantial argument can be made that active, partisan participation by jobholders in intra-organizational politics is a threat to good administration. Congress, in adopting the Hatch Act, endorsed this view with respect to most federal empolyees." (Pet. 11a, 12a.)

CONCLUSION

For the reasons stated in the petition, as further discussed herein, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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